IN THE

Supreme Court of the United States

PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

No.

HUNTER MILLS CORPORATION, a corporation, and WILLIAM TRAKINSKI and SIMON TRAKINSKI, individually, and as Officers of said corporation, *Petitioners*

v.

FEDERAL TRADE COMMISSION, *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Alex Akerman, Jr. and Thomas A. Ziebarth, on behalf of Hunter Mills Corporation, William Trakinski and Simon Trakinski, pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit, entered in the above captioned case on December 8, 1960, denying petitioners' petition to set aside an order of the Federal Trade Commission.

OPINIONS BELOW

The opinion of the court below is set out at page 1a of the Appendix hereto. It is reported at 284 F. 2d. 70. The decision of the Federal Trade Commission is set out at page 20a of petitioners' appendix printed for use in the court below and the hearing examiner's initial decision is set out at page 11a thereof.

JURISDICTION

The jurisdiction of the Supreme Court of the United States is invoked pursuant to Title 28 USC § 1254 (1).

QUESTIONS PRESENTED

Whether the United States Court of Appeals for the Second Circuit erred in holding:

1. That a Federal Trade Commission order to cease and desist may be based on one person's laboratory tests when an expert produced by the Commission testified that these tests were conducted under improper conditions;

2. That the Federal Trade Commission may in its discretion require petitioners to cease and desist from violations of certain subsections of the Wool Products Labeling Act of 1939 expressly found by the hearing examiner not to have been violated.

STATUTE INVOLVED

The Wool Products Labeling Act of 1939 (54 Stat. 1128; 15 USCA § 68 et seq.) provides in pertinent part:

"MISBRANDED WOOL PRODUCT:

Sec. 4. (a) A wool product shall be misbranded—

(1) If it is falsely or deceptively stamped, tagged, labeled, or otherwise identified:

(2) If a stamp, tag, label, or other means of identification, or substitute therefor under Section 5, is not on or affixed to the wool product and does not show—

(A) The percentage of the total fiber weight of the wool product, exclusive of ornamentation not exceeding 5 per centum of said total fiber weight, of (1) wool; (2) reprocessed wool; (3) reused wool; (4) each fiber other than wool if said percentage by weight of such fiber is 5 per centum or more; and (5) the aggregate of all other fibers. * * *

(B) The maximum percentage of the total weight of the wool product, of any nonfibrous loading, filling, or adulterating matter.

(C) The name of the manufacturer of the wool product and or the name of one or more persons subject to section 3 with respect such wool product."

"GUARANTY

SEC. 9(a) * * *

(b) Any person who furnishes a false guaranty except a person relying upon a guaranty to the same effect received in good faith signed by and containing the name and address of the person residing in the United States by whom the wool product guaranteed was manufactured and or from whom it was received, with reason to believe the wool product falsely guaranteed may be introduced, sold, transported, or distributed in commerce, is guilty of an unfair method of competition, and an unfair and deceptive act or practice, in commerce within the meaning of the Federal Trade Commission Act. * * *"

STATEMENT OF THE CASE

Petitioners are Hunter Mills Corporation, a New York corporation located at 60-01 27th Avenue, Woodside, Long Island, New York, and William and Simon Prakinski, President and Secretary-Treasurer, respectively, of this corporation.

In a complaint filed on February 6, 1959, the Federal Trade Commission charged petitioners with misbranding certain wool products in violation of Sections 4 (a) (1) and 4 (a) (2) of the Wool Act. They were further charged with the furnishing of false guarantees in violation of Section 9 of the Wool Act. The product involved is wool batting used as the filling in inexpensive quilted interlining materials.

Counsel in support of the complaint introduced eight sample swatches of batting manufactured by petitioners in evidence. (Commission Exhibit No. 1-8, inclusive). The Commission's counsel produced two witnesses who testified as to the purported wool content of these samples.

The first such witness was Miss Marjorie A. Molloy, a chemist employed by the Federal Trade Commission. She performed all the tests on the Commission Exhibits except for Exhibit No. 5.

The second witness was William H. Masterson who testified as to the test of Commission Exhibit 5 conducted by the Better Fabrics Testing Bureau of New York City. The only evidence purporting to support the charge of misbranding was the testimony of these two witnesses.

Petitioners filed a motion to strike a portion of the testimony of Masterson on the ground that it disclosed that he neither performed the tests in question nor

were they performed under his supervision, and to strike the testimony of Miss Molloy because her tests were improperly conducted.

In his initial decision the hearing examiner denied the motion to strike *in toto*. The Commission on appeal reversed the hearing examiner with respect to the Masterson test, but sustained him with respect to the tests conducted by Miss Molloy.

The hearing examiner found no violation of Section 4 (a) (2) (B) of the Wool Act and specifically noted that petitioner complied with § 4 (a) 2 (C). He limited the order in his initial decision to inhibitions relating to Section 4 (a) (2) (A) and (B). Cross appeals were filed by respective counsel, and the Commission in granting the appeal of counsel supporting the complaint, issued an order to cease and desist in language which would inhibit violation of any of the Subsections of Section 4 (a) (2), *including* Subsection (C).

Petitioners subsequently sought a review of the Commission's decision and order and on December 8, 1960, the United States Court of Appeals for the Second Circuit rejected each of petitioners' contentions and affirmed the decision and order of the Federal Trade Commission.

ARGUMENT

1. Tests Improperly Conducted

The Federal Trade Commission's case was based solely on the testimony of two expert witnesses, each of whom agreed as to the type of chemical test which should be used to determine the quantitative wool content of a piece of fabric. However, they differed sharply as to manner in which the sample being tested